

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 159 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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KOLI RAMSING GANDABHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR PM VYAS for Petitioner  
MR KP RAVAL for Respondent  
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CORAM : MR.JUSTICE J.M.PANCHAL  
and

MR.JUSTICE M.H.KADRI

Date of decision: 02/09/97

ORAL JUDGEMENT

(Per: Panchal,J.)

By means of filing this appeal under section

374(2) of the Code of Criminal Procedure, 1973, the appellant has challenged legality and propriety of judgment and order dated February 15, 1995 rendered by the learned Sessions Judge, Surendranagar, in Sessions Case no. 9/94 by which he is convicted under sections 302 & 201 of the Indian Penal Code and sentenced to suffer R.I. for life as well as fine of Rs. 500/- i/d. R.I. for three months. It may be mentioned that though the appellant is convicted under section 201 of the Indian Penal Code, no separate sentence is imposed on the appellant by the learned Judge for the said offence.

2. The prosecution case as emerging from F.I.R. lodged by witness Shivabhai is as under : Shivabhai Becharbhai is a resident of village Dhanad, Taluka : Halvad, District : Surendranagar. His daughter Godavariben was married to the appellant 20 years back and was residing with the appellant initially at village Kavadia. At the said village the appellant and Godavariben stayed for about 10 years, but thereafter moved to village Balva-Unava, Taluka : Kalol in search of work. The appellant used to treat his wife Godavariben cruelly, as he was suspecting her chastity. After staying about two years at village Balva-Unava, the appellant with his wife Godavariben came to reside at the Wadi of one Rehmanbhai Chandbhai situated in the sim of village Halvad. Both of them were doing labour work at the Wadi of one Patel Arjanbhai Bhagwanjibhai. As the appellant was subjecting his wife Godavari to cruelty, Godavari had come to reside with her parents at village Dhanad, but ultimately, she was persuaded to reside with the appellant. Four days prior to September 26, 1993, the appellant came to village Dhanad and informed his father-in-law Shivabhai Becharbhai that Godavari had left his house on the pretext of attending fair arranged at village Tarnetar and was missing since Pancham (fifth day of lunar fortnight). On hearing this, Shivabhai Becharbhai went to Wadi of Patel Arjanbhai Bhagwanjibhai, who informed Shivabhai that on September 19, 1993 he had given ornaments and some cash amount to Godavari, as she had expressed desire to attend fair at village Tarnetar. Patel Arjanbhai Bhagwanjibhai made inquiry about Godavari at village Sajjanpur where Soma Vershi, brother of Shivabhai is residing, without any avail. Inquiry made by other relatives of Shivabhai also did not yield any result. On September 25, 1993 at about 9.00 p.m. Shivabhai again went to Wadi of Patel Arjanbhai Bhagwanji where he met his so-in-law i.e. appellant. At about 11.30 p.m. the appellant informed Shivabhai that he would be able to trace his daughter either dead or alive soon. When Shivabhai made inquiries with the appellant

as to why he was saying so, the appellant informed that when he was proceeding to village Dhanad on September 22,1993 in a rickshaw,he met Godawari at village Malaniyad, who had alighted from a bus, but she did not give proper reply when he asked her as to where she had gone and therefore,he was annoyed and coaxed Godavari to come to field of Bharvad Dhana Ramu situated in the sim of village Mangalpar where he strangulated her and threw her dead body in an unused well situated in the field. The appellant asked Shivabhai not to inform anyone about the incident and threatened him with dire consequences. Because of threat administered by the appellant, Shivabhai did not narrate the confession made by the appellant to any one else.

Meanwhile Mr. C.P.Sisodiya, who was then discharging duties as P.S.I.,Halvad Police Station, received wireless message from Mr. Manilal, P.S.O. of Halvad Police Station that a dead body was found floating in the well situated in the field of Dhana Ramu Bharwad. Therefore, the P.S.I. went to the field and fished out the dead body from the well. The police officer thereafter held inquest on dead body in presence of Mamlatdar. At the time of holding inquest, Koli Virabhai Shivabhai, brother of deceased Godavari was present, who identified the dead body to be that of his sister Godavariben. The dead body was thereafter sent to Community Health Centre, Halvad for postmortem.Late in the night of September 25,1993 Hira, son of Shivabhai met Shivabhai and informed that dead body of Godawari was found from well,situated in field of Dhana Ramu Bharwad and dead body was brought to Hospital at Halvad. Therefore, Shivabhai in company of relatives went to Hospital. The postmortem on the dead body was performed by Dr.Kiritsinh Manubha Rana. After performance of autopsy, dead body was handed over to relatives for performing last rites. Thereafter Shivabhai Becharbhai Koli lodged complaint with Halvad Police Station. It was duly registered and investigated by P.S.I. Mr. Sisodiya. On September 27,1993, the appellant was arrested under a panchnama prepared in presence of panch witnesses. The appellant while in custody, expressed willingness to show place of incident. The investigating officer, therefore, prepared first part of the panchnama at Police Station in presence of panchas and proceeded in the company of panchas and other police officers to the place which was pointed out by the appellant. The investigating officer prepared panchnama of place of occurrence under section 27 of the Indian Evidence Act. The investigating officer thereafter recorded statement of the appellant. The appellant lodged complaint against

Patel Arjanbhai Bhagwanjibhai for the offences punishable under sections 497 & 506(2) of the Indian Penal Code, which was registered by the investigating officer on September 27,1993. The doctor who performed postmortem on dead body of Godavari opined that she was strangled to death and thereafter her dead body was thrown into the well. Viscera of the dead body of Godavari was sent to Forensic Science Laboratory for analysis. On receipt of report from Forensic Science Laboratory and completion of investigation,the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Halvad for the offences punishable under sections 302 & 201 of the Indian Penal Code.

3. As offence punishable under section 302 I.P.C. is exclusively triable by Court of Sessions, the case was committed to Sessions Court for trial, where it was numbered as Sessions Case no.9/94. The learned Sessions Judge framed charge against the appellant at exh.3. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined, (1) Dr. Kiritsinh Manubha Rana, PW 1 exh.6, (2) Shivabhai Becharbhai pw.2 exh.9, (3) Kiritsinh Gumansinh, pw.3 exh.21, (4) Jesingbhai Chaturbhai, pw.4 exh.22, (5) Chaturbhai Kanji, pw.5 exh.24, and (5) Chandansinh Parbatsinh Sisodiya, pw.6 exh.25, to prove its case against the appellant. The prosecution also produced documentary evidence, such as postmortem notes prepared by Dr.Kiritsinh and produced at exh.8, complaint filed by Shivabhai, panchnama prepared during the course of investigation, report received from Forensic Science Laboratory etc. in support of the charge levelled against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the appellant generally on the case and recorded his statement under section 313 of the Code of Criminal Procedure,1973. In his further statement,the appellant denied case of prosecution, but did not lead any evidence in defence. On appreciation of evidence, the learned Judge held that extra judicial confession was made by the appellant before witness Shivabhai Becharbhai and it proved the guilt of the appellant. In view of this conclusion, the learned Judge convicted the appellant and sentenced him as mentioned earlier by the impugned judgment, giving rise to the present appeal.

4. Mr. P.M.Vyas, learned Counsel for the appellant has taken us through the entire evidence on record.The learned Counsel for the appellant submitted that except the evidence regarding extra judicial confession alleged

to have made by the appellant before witness Shivabhai Becharbhai, no other evidence is led by the prosecution to bring home guilt of the appellant and as evidence regarding extra judicial confession is shaky and unreliable, conviction of the appellant deserves to be set aside. It was pleaded that the evidence of witness Shivabhai Becharbhai before whom the appellant is alleged to have made confession stands contradicted with the complaint lodged by him and, therefore, the impugned judgment should be set aside. What was claimed on behalf of the appellant, was that no particulars have been given by witness Shivabhai as to when and where confession was made and as the prosecution has failed to prove this circumstance against the appellant, the appeal should be allowed.

5. Mr.K.P.Raval, learned Counsel for the State Government submitted that evidence regarding extra judicial confession as tendered by witness Shivabhai Becharbhai is reliable and, therefore, it cannot be said that any error is committed by the learned Judge in placing reliance on the extra judicial confession. It was claimed on behalf of the State that the evidence of Shivabhai Becharbhai regarding extra judicial confession is amply corroborated by medical evidence on record and, therefore, the appeal should be dismissed. What was emphasised by the learned Counsel for the State Government was that the prosecution has proved beyond reasonable doubt that the appellant strangled his wife Godavari and thereafter threw her dead body into a well and, therefore, conviction of the appellant under sections 302 & 201 of I.P.C. should be upheld by the Court.

6. The fact that deceased Godawari died a homicidal death is not in dispute before us in the present appeal. The inquest report prepared by P.S.I. Mr. Sisodiya is on the record of the case at exh.11. After holding inquest on the dead body, P.S.I. Mr. Sisodiya had sent dead body to Community Health Centre, Halvad for autopsy. Autopsy on the dead body of Godawari was performed by Dr.Kiritsinh Manubha Rana. In his substantive evidence, Dr.Kiritsinh has deposed before Court that Godawari died because of asphyxia due to strangulation over neck. This is stated by the doctor in para-5 of his deposition, which is not challenged in cross-examination. The injuries sustained by the deceased are also noted by the doctor in postmortem notes prepared by him and produced at exh.8. In the postmortem notes, cause of death is mentioned to be suffocation due to strangulation over

neck. Having regard to the substantive evidence of Dr.Kiritsinh before Court, which is corroborated by postmortem notes prepared by him, we are of the view that no error is committed by the learned Judge in concluding that Godawari died a homicidal death. Under the circumstances, said finding is hereby upheld.

7. It is an admitted position that no witness is examined by the prosecution claiming to be an eye witness to the incident. The whole case rests on extra judicial confession alleged to have been made by the appellant before witness Shivabhai Becharbhai. As the whole case of the prosecution is dependent on extra judicial confession, it would be worthwhile to notice law on the subject. The word "confession" has not been defined in Indian Evidence Act,1872. A confession is an admission made at any time by a person charged with crime stating that he committed the crime. Confessions can be broadly classified in two categories, namely, judicial confessions and extra-judicial confessions. Judicial confessions are those which are made before a Magistrate or in Court in the due course of legal proceedings. A confession which is neither made to a Magistrate nor in the course of legal proceedings is described as an extra-judicial confession. It is a free and voluntary confession of guilt made by a person accused of a crime in the course of conversation with person other than a Judge or Magistrate seized of the charge against him. Thus, extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or in Court. It embraces not only express confession of crime, but also those admissions and acts of the accused from which his guilt may be implied. An extra-judicial confession made to one who is not a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it, is admissible in evidence against the accused and can be acted upon. Before the Court will act on extra-judicial confession, the circumstance under which the confession is made, the manner in which it is made, the person to whom it is made, should be considered. Though extra-judicial confession appears to have been treated as a weak piece of evidence, there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstance, time when the confession was made and credibility of the witness who speaks about such confession. It is true that in case of extra-judicial confession, Court requires the witness to give actual words used by the accused as

nearly as possible, but it is not an invariable rule that Court should not accept the evidence, if not the actual words, but the substance were given. It is well settled that extra-judicial confession, particularly when not recorded, must be substantially proved by evidence. Extra-judicial confession should be proved in the same way as other admissions or statements, by evidence of persons to whom they are made. They must be proved by evidence of the most reliable character. The value to be attached to an extra-judicial confession depends upon the reliability of the person to whom it is made, interval between the occurrence and making of confession, reproduction of words used by the accused and the follow up action. It is for the Court having regard to credibility of the witness, his capacity to understand confession made by the accused etc. to accept the evidence or not. Ultimately, it would all depend upon the facts of each case.

8. In the light of above stated principles of appreciation of evidence relating to extra-judicial confession, we will now proceed to examine the evidence of witness Shivabhai Becharbhai before whom the appellant is alleged to have made the confession. Witness Shivabhai is examined at exh.9. His evidence was recorded on February 13,1995. In his deposition the witness stated that 1 1/2 years prior to recording of his deposition he learnt about death of his daughter when he went to Community Health Centre, Halvad. The witness claimed that one Rana Saheb of village Halvad had informed him that his daughter was strangulated to death. The witness claimed that after strangulation his daughter was thrown into well and P.S.I. had taken out dead body from the well. After informing the Court that he had given complaint, the witness asserted that the appellant informed him that he (appellant) had strangulated Godawari and, therefore, he had lodged complaint with police. In his cross-examination, the witness admitted that at the time of incident, his daughter and son-in-law were residing at Wadi of Arjanbhai and they were living peacefully. During cross-examination the witness informed the Court that he was not able to say as to why the incident took place. The witness clearly deposed in his cross-examination that his son had informed him about the incident and thereafter he in the company of his son had straightway gone to Halvad Police Station where the appellant was detained by police. The witness claimed that P.S.I. informed him that the appellant had killed his daughter and, therefore, at the instance of P.S.I. he had lodged the complaint. This witness deposed before the Court that as he is illiterate, his thumb impression

was obtained by P.S.I. on the complaint, but the complaint was never read over to him. The material admission made by the witness in his cross-examination is this that after receiving information about the incident and before he went to the police station, the appellant had not met him during the interregnum period. He also claimed in his evidence that his daughter was never missing and he had made no attempts to trace her. This in short is the summary of evidence of witness Shivabhai. As extra-judicial confession is not recorded by any one, it must be substantially proved by evidence. A confession in criminal law means an admission of certain facts which constitute an offence committed by a person charged with the offence which is subject matter of confession. A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession. Witness Shivabhai Becharbhai has not given any particulars in his evidence as to the date on which confession was made, time of making confession and the place where it was made. His evidence would indicate that the appellant and deceased had no disputes between them and witness Shivabhai was at loss to understand as to why the incident had taken place. Under the circumstances, we are of the opinion that there was no reason for the appellant to make any confession regarding his guilt before this witness. Though in the examination-in-chief witness stated that the appellant had confessed before him that he had strangled Godawari, it is evident that on learning about the incident from Rana Saheb of Halvad, he had straightway gone to Halvad Police Station in the company of his son where the appellant was found to have been detained by police and during the interregnum period between the receipt of information about the incident and going to the police station the appellant had never met him. This admission on the part of witness Shivabhai completely excludes the case of the appellant having made confessional statement before him. The evidence of this witness would show that he was not knowing anything about the incident and had lodged complaint at the instance of the investigating officer. From his evidence one thing which emerges crystal clear is that the relations between the deceased and the appellant were cordial and both of them were living peacefully. Thus, motive which might have prompted the appellant to kill his wife is not proved by prosecution. The particulars which are mentioned in the complaint are omitted to be stated by the witness in his substantive evidence. In the earlier part of the judgment we have noticed in detail, the facts



emerging from the complaint lodged by witness Shivabhai. A bare reading of the deposition of witness Shivabhai makes it abundantly clear that he has given complete go-by to what is stated by him in his complaint and omitted to state the relevant facts before Court. As witness Shivabhai Becharbhai has not given material particulars about extra-judicial confession alleged to have been made by the appellant before him, we do not think it safe to rely on the said evidence for the purpose of basing conviction of the appellant on murder charge. The subsequent conduct of witness Shivabhai also deserves to be noted. In his complaint it was stated by him that the appellant confessed guilt on September 25, 1993, but till filing of the complaint the witness did not inform even his near relatives about the so-called confession having been made by the appellant. Though in the complaint it is stated by the witness that threats were administered to him by the appellant and, therefore, he did not narrate to anyone the confession made by the appellant, it is not so stated in his substantive evidence. From the deposition of this witness, it is apparent that he made disclosure about the extra-judicial confession for the first time in police station and he never told about this to any one else though he met several persons after so-called confession was made to him. Under the circumstances, it is not safe to rely on the evidence of extra-judicial confession more so when no motive is alleged or proved against the appellant. Apart from these material lacunae appearing in the evidence of witness Shivabhai, the so-called confession is not complete in the sense that the witness has not deposed before Court that the appellant had confessed before him that after strangulation the dead body was thrown by him into the well. There is no manner of doubt that the appellant never admitted in terms the offence or at any rate substantially all the facts which constitute offence punishable under section 201 I.P.C. From the impugned judgment it is evident that while holding that prosecution has proved extra-judicial confession alleged to have been made by the appellant, the learned Judge has placed reliance on the panchnama of place of occurrence which was prepared under section 27 of the Evidence Act, wherein there is reference to admission of guilt by the appellant. It hardly needs to be stated that essential ingredient of section 27 is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information and only such portion of the information given as is distinctly connected with the said discovery is admissible against accused, but confessional statement made by the accused and allegedly recorded in the panchnama prepared under

section 27 of the Evidence Act cannot be relied on for the purpose of basing conviction. While believing the case of prosecution regarding extra-judicial confession made by the appellant, the learned Judge has totally ignored material admissions made by the witness Shivabhai in his cross-examination rendering the impugned judgment vulnerable. As we have disbelieved case of prosecution that extra-judicial confession was made by the appellant before witness Shivabhai, the plea that evidence of witness Shivabhai is corroborated by medical evidence and, therefore, conviction be upheld, cannot be accepted. On overall view of the evidence led by prosecution, we are of the opinion that prosecution has failed to prove case against the appellant beyond reasonable doubt and the appeal deserves to be allowed. Having regard to the weak and feeble evidence led by the prosecution regarding so-called confession made by the appellant and credibility of witness Shivabhai coupled with the interval between occurrence and making of confession and failure of the witness to state material particulars about the confession, we are of the view that evidence regarding extra-judicial confession cannot be accepted. As noted earlier, except extra-judicial confession, no other evidence is led by the prosecution to prove guilt of the appellant. Under the circumstances, conviction of the appellant will have to be set aside.

For the foregoing reasons, the appeal succeeds. Judgment and order dated February 15, 1995 rendered by the learned Sessions Judge, Surendranagar, in Sessions Case no.9/94 convicting the appellant under sections 302 & 201 of the Indian Penal Code and sentence imposed therefor are hereby set aside and quashed. The respondent is directed to set the appellant at liberty immediately unless required in any other case. Muddamal is ordered to be disposed of in terms of directions given by the learned Sessions Judge in the impugned judgment.

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